

Appl. No.: 09/932,665
Amdt. Dated: 01/06/2006
Off. Act. Dated: 12/07/2005

Amendments to the Drawings:

Please accept the set of substitute formal drawings (sheets 1-9) which are enclosed. Each sheet is marked at the top as "replacement sheet" for identification, and the drawings overcome the noted informality of the prior drawings. No new matter has been added. Approval of the substitute drawings is respectfully requested by the Applicant.

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REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested in view of the foregoing amendments and discussion presented herein.

1. Objection to Amendment Filed 09/02/05.

This communication is responsive to the Office Action dated 12/07/2005, in which the Examiner objected to the amended claims as including limitations from claims which has previously been withdrawn; namely, inclusion of notification by "email" which had been recited in withdrawn claims.

In response, the Applicant has amended the claims in a manner which does not include limitations of withdrawn claims. The objectionable language, found in Claims 1, 21, 36 and 37 of Applicant's previous response, has been omitted.

The remainder of this communication is responsive to the Office Action dated 05/06/2005.

2. Change of Power of Attorney.

Applicant's counsel has been changed to the patent practitioners within the law firm of O'Banion and Ritchey to continue prosecuting the instant application. This change was recorded with revocation of the previous power of attorney and registering a new power of attorney, wherein all communication should be directed accordingly.

A copy of the FAXed change of power of attorney as filed July 1, 2005 is attached.

3. Objection to Drawings.

Formal drawings are submitted herewith as required by the Examiner.

4. Rejection to Claims 1, 4-9, 21, 36 and 37 under 35 U.S.C. § 103(a).

Claims 1, 4-9, 21, 36 and 37 were rejected as being unpatentable over Hans et al. (U.S. Published Patent App. No.: US 2002/0120577).

Claims 1, 21, 36 and 37. Independent Claims 1, 21, 36 and 37 are rejected based on the Hans reference.

A number of shortcomings become readily apparent when considering this

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rejection. In particular (1) all claim limitations are not taught, (2) rejection based only on partial similarity of inventive concept or idea, (3) invention is not considered as a whole, (4) advantages are disregarded, (5) different principle of operation utilized, (6) solved a different problem, (7) lack of specificity of suggestion to modify, (8) "plain meaning" of recited elements ignored, (9) elements in reference are not equivalent, (10) claim elements improperly considered non-functional, and (11) no *prima facie* case of obviousness has been established. Any of these shortcomings separately are sufficient to overcome the rejection, whereas taken together they are overwhelmingly indicative of patentability.

The following discusses with greater particularity certain shortcomings.

DIFFERENT OBJECTS AND PRINCIPLES OF OPERATION

In considering the claims of the instant application as a whole, the purposes and principles of operation of the invention and the relied upon reference must be compared.

The purpose of Hans is stated succinctly in the Abstract: *"enables users to register previously owned digital content and, subsequently, allows user to access the registered content using any electronic device that is connected to the system"*. Hans describes rights and royalty management in relation to content access. Operation of the Hans reference is based on the principle of licensing content over the Internet for content which can be communicated electronically.

However, the instant application is drawn to a system and method of providing notification functions for electronic music marker devices. The operating principle of the instant application is that of collecting music clips from broadcast playlists in response to data marks contained within a data marking device of the user. In addition, notification is provided to the user based on the availability of the music clip information. If the desired playlist is not currently available, the system is configured to determine when the playlist becomes available and to send a notification to the user.

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Consequently, it can be readily recognized that the relied upon Hans reference operates toward different inventive objects and principles of operation than the instant application. Hans relies on licensing a user for specific content, and provides no operating principles which relate to collecting music clips from playlists in response to a data mark from a data marking device.

In support of the rejection the Examiner has claimed that Hans teaches all the claim elements, excepting the use of data marks and playlists as recited in Applicant's claim which Examiner notes *"these limitations are not structurally involved in the elements of the recited system"*.

ELEMENTS HAVE STRUCTURAL INVOLVEMENT TOWARD RESULT

Applicant respectfully traverses this grounds for rejection in a number of important regards.

(a) First, giving no patentable weight to the problem being solved clearly flies in the face of numerous examination tenets, including consideration as a whole.

The instant application, entitled "Electronic Music Marker Device Delayed Notification" is generally directed at generating notification when a playlist is not available in response to communicating data marks from a data marking device. Furthermore, the device can generate notification when the playlist becomes available. Clearly, "playlists" and "data marks" are functional elements - they are interconnected and they provide functionality which is critical to the practice of the invention.

Turning to the MPEP for guidance in this area, it is seen from MPEP 2106 Patentable Subject Matter - Computer-Related Inventions [R-2] - 2100 Patentability that two aspects must be carefully considered in order to assess "nonfunctionality".

The first factor is whether the invention as a whole has utility. This is discussed in MPEP 2106 as follows:

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"The claimed invention as a whole must accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02"

Second, the elements must form a part of a practical result. This is discussed in MPEP2106 as follows:

"Apart from the utility requirement of 35 U.S.C. 101, usefulness under the patent eligibility standard requires significant functionality to be present to satisfy the useful result aspect of the practical application requirement. See Arrhythmia, 958 F.2d at 1057, 22 USPQ2d at 1036. Merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make the invention eligible for patenting. For example, a claim directed to a word processing file stored on a disk may satisfy the utility requirement of 35 U.S.C. 101 since the information stored may have some "real world" value. However, the mere fact that the claim may satisfy the utility requirement of 35 U.S.C. 101 does not mean that a useful result is achieved under the practical application requirement. The claimed invention as a whole must produce a "useful, concrete and tangible" result to have a practical application."

The MPEP refers to the data interaction by considering that the claimed invention as a whole must produce the "useful, concrete and tangible" result. Data which is being manipulated within the invention can clearly not be construed as non-functional. In this case the Examiner is attempting to consider both the tangible result (playlist), and the input (data mark) received for generation of the tangible result as being non-functional elements.

The aspects of data marks and playlists are defined clearly in the specification, while Claims 2-3 attempted to provide further clarification of these aspects, but these have been held to be a separate species by the Examiner (although the material in claims 2-3 is also contained within original independent Claims 36-37, which are held to be generic).

Consequently, there is no basis for asserting the element to be non-functional.

NOT ALL CLAIM LIMITATIONS RECITED

(b) Secondly, the elements of Hans do not equate to those recited in Applicant's Claim 1. Specifically, Examiner puts forth that in paragraph [0025] Hans describes *"a server terminal coupled to said gateway terminal configured to receive said one or more data marks and generate a user playlist"*.

However, Hans does not describe a server terminal which in response to data marks generates playlists. Hans does describe that *"Content manager 11 may be configured to allow a user to create playlists or otherwise organize the digital content that is registered with content manager 11."* Yet, the structural relations recited in Claim 1 (*as required in establishing a Prima Facie case of obviousness*) are not taught by Han, specifically there is no server terminal that converts data marks to generate a playlist.

In addition, the second claim element of a "playlist provider" has been ignored and not considered in the claim relation. Again Applicant respectfully contends that examination of the Claim in this manner is improper, because ALL claim elements must be properly considered and find support in the relied upon reference, or references.

Accordingly, it is asserted that the Examiner has not established a *prima facie* case of obviousness with respect to Claim 1 for the above reasons.

(c) Claim 1 has been amended. Despite the lack of a *Prima Facie* case of obviousness being made, Applicant has amended Claim 1 to improve clarity and to capture the "delayed notification" aspect which was a primary intent of the instant application - as indicated by the preamble of the claim and the invention title. Although these limitations have not been added to overcome the cited reference, it should be appreciated that the additional details provide additional distinguishing elements. For example, the original claim did not describe searching for music clips based on the data marks within the broadcast playlist, and did not distinguish between a broadcast playlist and a user playlist. It is intended that the amended claim will bring clarity to the operation of the server terminal, in particular that it searches for music clips in the

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broadcast playlists based on the data marks. Information is collected about the music clips into a user playlist.

The delayed notification aspect is recited as being a means of notifying the user when playlists associated with the data marks being searched for become available.

Therefore, independent Claim 1 is patentably distinct from the reference and the Applicant respectfully requests that the rejection of Claim 1 and claims which depend therefrom be withdrawn.

Claim 21. Independent Claim 21 is drawn to "*a delayed data mark playlist notification system*".

The shortcomings of the rejection of Claim 1 also generally apply to Claim 21. Furthermore, Claim 21 contains elements which were not recited in Claim 1, wherein additional grounds for traversing the rejections become apparent.

(a) Elements of Claim 21 cooperate to produce a result that both has utility and operates to form a practical result; therein these elements are not "nonfunctional".

(b) Hans is silent about the use of "data marks", "generating corresponding user playlist (from the data mark)", and of the playlist containing music clip information with music clip name, artist, and/or album.

(c) The silence of the Hans reference is not surprising in that Hans is directed at a different purpose with different operating principles. As described previously, Hans is directed at a mechanism for licensing content over the internet. There is no teaching in Hans for the use of a data marking device, and further no teachings of looking up music clips from a playlist in response to data marks, and still further no discussion of providing notifications with regard to the availability of the music clips.

Accordingly, a *prima facie* case of obviousness has not been established as the relied upon Hans reference does not support the obviousness rejection.

In addition Claim 21 was also amended to capture the delayed notification aspect of the invention. The claim describes in further detail the sending of notifications to the user by the programming of the server terminal.

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Therefore, Claim 21 is not obvious in view of the relied-upon reference and the rejection of Claim 21 and the claims which depend therefrom should be withdrawn.

Claim 36. Independent Claim 36 is drawn to “data marking device notification system”. The shortcomings of the rejection of Claims 1 and 21 also apply to Claim 36. Claim 36 is cast in a mean-plus-function format.

(a) Elements of Claim 36 cooperate to produce a result that both has utility and operates to form a practical result; therein these elements cannot be properly considered “nonfunctional”.

(b) Hans is silent about the use of “data marks”, “generating corresponding user playlist (from the data mark)”, and of the playlist containing music clip information with music clip name, artist, and/or album.

(c) Again, the silence of the Hans reference in this regard is not surprising in that Hans is directed at a different purpose with different operating principles.

Accordingly, a *prima facie* case of obviousness has not been established.

In addition Claim 36 was also amended to clarify claim elements, such as to distinguish broadcast playlist from user playlist and to capture the delayed notification aspects of the invention. The claim describes in further detail the sending of notifications to the user by the programming of the server terminal.

Therefore, Claim 36 is not obvious in view of the relied-upon reference and the rejection of Claim 36 and the claims which depend therefrom should be withdrawn.

Claim 37. Independent Claim 37 is drawn to a “delayed data mark playlist notification system”.

The shortcomings of the rejection of Claims 1, 21, and 36 also apply in general to Claim 37, which like Claim 36 is also written in a means-plus-function format.

(a) Elements of Claim 37 cooperate to produce a result that both has utility and operates to form a practical result; thereby these elements are not “nonfunctional”.

(b) Hans is silent about the use of “data marks”, and more particularly data marks containing a time stamp and date stamp “generating corresponding user playlist

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(from the data mark)", and of the playlist containing music clip information with music clip name, artist, and/or album.

(c) The Hans reference is directed at a different purpose with different operating principles than those found in the elements of Claim 37.

Accordingly, a *prima facie* case of obviousness has not been established.

In addition Claim 37 was also amended to clarify claim elements, such as to distinguish broadcast playlist from user playlist and to capture the delayed notification aspects of the invention. The claim describes in further detail the sending of notifications to the user by the programming of the server terminal.

Therefore, Claim 37 is not obvious in view of the relied-upon reference and the rejection of Claim 37 and the claims which depend therefrom should be withdrawn.

Claims 4-9. Dependent Claims 4-9 contain additional limitations. In view of the discussed patentability of Claim 1, each of these dependent claims should be considered *a fortiori* allowable.

Furthermore, a number of elements of these claims provide separate grounds for patentability and do not comport to aspects of the relied-upon reference.

Claims 4-5. Dependent Claims 4-5 describe the inclusion of a data marking device identification code which is transmitted to the server terminal. This feature is equated to an IP address within the system of Han. However, an IP address is not the same as an identification code, unless the device is IP based and uses the IP address for that purpose. IP addresses, as taught by Han, are not used to discern user characteristics and/or location.

Claim 6. Dependent Claim 6 describes the use of the identification code within the server to determine geographic location. The utility of this feature is easily recognized from the use of the device in the specification. The data marking device is configured to input data that can be converted to a means of locating a music clip, for instance a time mark and unit identification, wherefrom music clips are determined from geographic location based on the identification code and information entered by the

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user as to their location. The location being used to determine the set of broadcasters from which the broadcast playlists are collected for the times associated with the time marks. Applicant has amended Claim 6 to add this object of the identification code.

Accordingly Claim 6 provides a utility and operates to form a practical result, therein Claim 6 can not be considered to lack structural involvement.

Claims 7-9. Dependent Claims 7-9 describe retrieving and using broadcast call letters in response to geographic information based on the identifier as recited in Claim 6. These limitations again provide utility and are structurally involved, however, these claim elements have been improperly ignored.

Therefore, dependent Claim 4-9 should be considered *a fortiori* allowable, while they also recite elements not found in the reference. Either of these conditions overcome the rejection, wherein the rejection of these claims should be withdrawn.

5. Traversal of Rejection of Claims 1 and 36-37; In re Donaldson.

The Applicant respectfully traverses the grounds for rejection, and cites *In re Donaldson*, 16 F.3d 1189, 1193 (Fed. Cir. 1994) (en banc) as the basis for the traversal. Claims 1 and 36-37 are written in means plus function form pursuant to 35 U.S.C. §112, sixth paragraph, and therefore, must be interpreted during examination under *In re Donaldson*.

In rejecting Claims 1 and 36-37, as well as the claims that depend therefrom, the Examiner made no specific fact findings as to the scope of equivalents for the means plus function elements in the claims. Instead, the Examiner appears to have followed the provisions of MPEP § 2183 ("Making a Prima Facie Case of Equivalence"), which states:

If the examiner finds that a prior art element performs the function specified in the claim, and is not excluded by any explicit definition provided in the specification for an equivalent, the examiner should infer from that finding that the prior art element is an equivalent, and should then conclude that the claimed limitation is anticipated by the prior art element. The burden then shifts to applicant to show that the element shown in the prior art is not an equivalent of the structure ... disclosed in the application. *In re Mulder*, 716 F.2d 1542, 219

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U.S.P.Q. 189 (Fed. Cir. 1983). No further analysis of equivalents is required of the examiner until applicant disagrees with the examiner's conclusion, and provides reasons why the prior art element should not be considered an equivalent.

While the Examiner appears to have followed the provisions of MPEP §2183, such provisions are contrary to Federal Circuit law. The Federal Circuit has held that an examiner "construing means-plus-function language in a claim must look to the specification and interpret that language in light of the corresponding structure ... described therein, and equivalents thereof," *In re Donaldson*, 16 F.3d 1189, 1193 (Fed. Cir. 1994) (en banc), and in so ruling expressly denied that "the PTO is exempt from this mandate." *Id.* The Federal Circuit added that it was specifically overruling any precedent that suggested or held to the contrary. *Id.* at 1193-94. In response to the PTO's argument that the court's ruling conflicted with the principle that a claim should be given its broadest reasonable interpretation during prosecution, the Federal Circuit held that the *Donaldson* decision was setting "a limit on how broadly the PTO may construe means-plus-function language under the rubric of 'reasonable interpretation.'" *Id.* at 1194. In other words, an examiner's claim interpretation is not "reasonable" if it is not based on the specification's description of the implementation of the means element of the claim. The court then said, "Accordingly, the PTO may not disregard the structure disclosed in the specification corresponding to such [means-plus-function] language when rendering a patentability determination." *Id.* at 1195.

Here, as in *Donaldson*, the Examiner is required by statute to look to the Applicant's specification and construe the "means" language as referring to corresponding means disclosed in the specification and equivalents thereof." See *id.* at 1195. However, the Examiner did not construe the means language of these claims, however. Nor did the Examiner find, on the basis of specific facts of record here, that the means disclosed in the Applicant's specification were equivalent to that of the cited references. Instead, as prescribed by MPEP §§ 2183-84, the Examiner simply

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presumed equivalence. The presumption methodology used here, which the MPEP prescribes, clearly conflicts with the requirements of the Federal Circuit's *Donaldson* decision. The approach taken by the Examiner in this case also conflicts with *In re Bond*, 931 F.2d 831 (Fed. Cir. 1990).

The very point of these cases is that, in this context, limitations from the specification control the interpretation of the claim. Under §112, paragraph 6, a means-plus-function element of a claim must be construed to mean that which is disclosed in the specification and its equivalents. In *Donaldson*, the Federal Circuit said that "our holding does not conflict with the general claim construction principle that limitations found only in the specification of a patent or patent application should not be imported or read into a claim." In other words, the court was saying that a §112, paragraph 6 "means" element does not need to be "imported or read into" a means-plus-function claim because the specification's limitations and their equivalents are already in the claim by virtue of §112, paragraph 6's command. Thus, the Federal Circuit said (16 F.3d at 1195): "What we are dealing with in this case is the construction of a limitation already in the claim in the form of a means-plus-function clause and a statutory mandate on how that clause must be construed."

Based on the foregoing, the Applicant respectfully submits that the rejection of Claims 1 and 36-37, as well as the claims that depend therefrom, lacks proper foundation and that the rejection should be withdrawn. Those claims, each of which include means plus function limitations, should have been interpreted in view of the specification as required by *In re Donaldson*. If those claims had been so interpreted, they would have been allowable since the cited references do not, singly or in combination, teach, suggest or provide motivation or incentive for the subject matter recited in those claims.

6. Amendments to Claims 1, 6, 21 and 36-37.

Claim 1. Independent Claim 1 was amended to clarify claim elements, and to capture the delayed notification aspect of the invention.

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In addition the meaning of the playlist is further defined as including “information on at least one music clip” which is also recited in Claim 37.

Support for these changes is found throughout the specification, including:

FIG. 10, blocks 1030, 1060 - 1080 illustrate determination of playlist availability and the communication of notifications for not available, or emails when playlist becomes available, which is described in the specification at page 15 lines 6-16:

“At step 1070, controller 145 of server terminal 140 continues to periodically query storage unit 144 to determine whether the playlists for the bookmarked music clips are available, and when controller 145 determines that the corresponding playlists for the user’s bookmarked music clips are available, controller 145 in one embodiment is configured to retrieve the user’s email address stored in user account database 600 in storage unit 144 and to generate an email notification to the user with a message indicating that the requested information corresponding to the bookmarked music clips is available. Controller 145 in one embodiment may also generate a hypertext link to the user’s e-marker.com account and attach the generated link to the email notification to the user.”

and the transmission of information about the music clips at page 7, lines 11-14:

“In particular, for music broadcasts from registered radio stations prior to 10 PM, playlist provider 150 may be configured to transmit information corresponding to the broadcast music clips to the server terminal 140 by 5 AM (at playlist provider 150) of the following day.”

as well as searching for playlists associated with the data marks at page 2, line 25:

“search for playlists corresponding to said one or more data marks”.

Claim 6. Dependent Claim 6 was amended to clarify the intent of determining geographic location. Support is found throughout the specification, such as at page 11, lines 18-25:

“As will be discussed in further detail below, depending upon the feed type assigned for each geographic location, playlist provider 150 is configured to transmit information corresponding to broadcast music clips to server terminal 140 for transmission to the users via gateway terminal 130 within the assigned time frame (for

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example, within 10 minutes of broadcast in geographic location such as San Francisco, California, or alternatively, within a predetermined time frame (next-day feed type) for geographic location such as Vail, Colorado."

Claim 21. Independent Claim 21 was amended to clarify the difference between broadcast playlist and user playlist. In addition, the claim was amended to capture the notification aspect of the present invention as similarly recited in amended Claim 1.

Claim 36. Independent Claim 36 was amended to clarify the difference between broadcast playlist and user playlist. In addition the claim was amended to capture the notification aspect of the present invention as similarly recited in amended Claim 1.

Claim 37. Independent Claim 37 was amended to clarify the difference between broadcast playlist and user playlist. In addition, the data marks are noted as being "input by a user" to more readily support description of the user elsewhere in the claim. Support for this aspect is found throughout the specification, such as at page 7 lines 29-32: *"Also provided on body 201 are display panels 204a and 204b which are configured to display the number of user inputted e-marks and the type of registered broadcast station for the corresponding e-marks, respectively."*

Furthermore, Claim 37 was amended to capture the notification aspect of the present invention as similarly recited in amended Claim 1.

7. Request for Additional Information.

The Examiner has requested additional information from the Applicant. After reviewing the Examiner's request, the Applicant noted that there are three elements (a-c) listed with the request. However, the first two elements relate to "a computer network to select a catalytic converter substrate or diesel particulate filter", which is not applicable to the present case. The Applicant must presume this is a typographical error, and since this does not relate to the instant application, the Applicant is unable to respond to this portion of the request.

In part (c), the Examiner requests additional information about the electronic music marker device. In response, the Applicant has included within the appendix

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articles which were found on the World Wide Web describing the data marking system of Sony.

8. Amendments Made Without Prejudice or Estoppel.

Notwithstanding the amendments made and accompanying traversing remarks provided above, the Applicant has made these amendments in order expedite allowance of the currently pending subject matter. However, the Applicant does not acquiesce in the original grounds for rejection with respect to the original form of these claims. These amendments have been made without any prejudice, waiver, or estoppel, and without forfeiture or dedication to the public, with respect to the original subject matter of the claims as originally filed or in their form immediately preceding these amendments. The Applicant reserves the right to pursue the original scope of these claims in the future, such as through continuation practice for example.

9. Conclusion.

Based on the foregoing, Applicant respectfully requests that the various grounds for rejection in the Office Action be reconsidered and withdrawn with respect to the presently amended form of the claims, and that a Notice of Allowance be issued for the present Application to pass to issuance.

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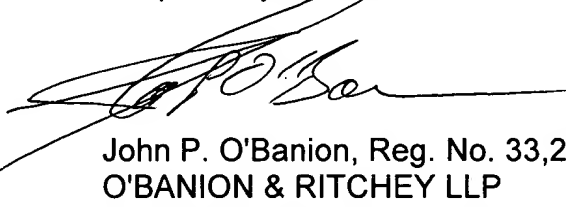
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In the event any further matters remain at issue with respect to the present Application, Applicant respectfully requests that the Examiner please contact the undersigned below at the telephone number indicated in order to discuss such matter prior to the next action on the merits of this Application.

Date: _____

1/6/06

Respectfully submitted,



John P. O'Banion, Reg. No. 33,201
O'BANION & RITCHEY LLP
400 Capitol Mall, Suite 1550
Sacramento, CA 95814
(916) 498-1010

Attachments:

- (1) Replacement sheets of drawings (sheets 1-9)
- (2) Electronic Data Marker Articles (14 pages)
- (3) Copy of Powers of Attorney as filed July 1, 2005 (4 pages)

*** TX REPORT ***

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O'BANION & RITCHEY LLP
INTELLECTUAL PROPERTY ATTORNEYS

Wells Fargo Center
400 Capitol Mall, Suite 1550
Sacramento, California 95814
Tel. (916) 498-1010
Fax (916) 498-1074

July 1, 2005

TELECOPIER TRANSMITTAL SHEET

TELECOPY TO: COMMISSIONER FOR PATENTS

FAX NUMBER: (703) 872-9306

FROM: JOHN P. O'BANION

RE: 09/932,665
SON5180.74A (50P4359.00)

CERTIFICATE OF FACSIMILE TRANSMISSION (37 CFR 1.8)

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JOHN P. O'BANION
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(Signature)

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I hereby certify that the foregoing:

Copy of Revocation of Power of Attorney and New Power (4 pages)

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JOHN P. O'BANION

(Type or print name of person mailing paper)



(Signature of person mailing paper)



O'BANION & RITCHEY^{LLP}
INTELLECTUAL PROPERTY ATTORNEYS

Wells Fargo Center
400 Capitol Mall, Suite 1550
Sacramento, California 95814
Tel. (916) 498-1010
Fax (916) 498-1074

July 1, 2005

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FROM: JOHN P. O'BANION

RE: 09/932,665
SON5180.74A (50P4359.00)

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JOHN P. O'BANION
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IF THERE ARE ANY PROBLEMS OR QUESTIONS, PLEASE CONTACT US AT (916) 498-1010. OUR FAX NO. IS (916) 498-1074.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: YUICHIRO DEGUCHI
Serial No.: 09/932,665
Filing Date: AUGUST 17, 2001
Title: ELECTRONIC MUSIC MARKER DEVICE DELAYED NOTIFICATION
Group No.: 3625
Examiner: HAQ, NAEEM U
Docket No.: SON5180.74A (50P4359.00)
Cust. No.: 36813

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REVOCATION OF POWER OF ATTORNEY AND NEW POWER OF ATTORNEY

Dear Sir:

The undersigned assignee of the entire interest in the above-identified subject application hereby revokes all previous powers of attorney and hereby appoints

John P. O'Banion	Reg. No. 33,201
James M. Ritchey	Reg. No. 32,594
James C. Peacock III	Reg. No. 40,124
Steven L. Smith	Reg. No. 44,343
Rodger H. Rast	Reg. No. 45,853
Richard M. Wiesner	Reg. No. 48,748
Robert F. Kramer	Reg. No. 51,242
M. Robyn Carrillo	Reg. No. 47,474
Frederick J. Zustak	Reg. No. 36,728
Harold T. Fujii	Reg. No. 38,458
Mark Gorman	Reg. No. 43,641
Milton M. Frazier	Reg. No. 44,687
Christopher B. Allenby	Reg. No. 45,906

as its attorneys to prosecute this application and to transact all business in the United States Patent and Trademark Office connected therewith, said appointment to be to the exclusion of the inventors and their attorney(s) in accordance with the provisions of 37 C.F.R. 3.71.

An assignment of the entire interest in the above-identified subject application:

☒ was recorded on AUGUST 17, 2001 at reel/frame 012102/0496.

☐ is submitted herewith for recording.

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CUSTOMER NUMBER 36813

John P. O'Banion
O'BANION & RITCHEY LLP
400 Capitol Mall, Suite 1550
Sacramento, CA 95814

DIRECT TELEPHONE CALLS TO:

John P. O'Banion
(916) 498-1010

Dated: 5/13/05

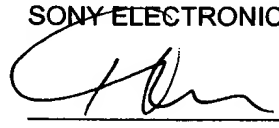
ASSIGNEE: SONY CORPORATION

Signature: 

Typed Name: HAROLD T. FUJII

Title: VICE PRESIDENT, INTELLECTUAL PROPERTY

ASSIGNEE: SONY ELECTRONICS INC.

Signature: 

Typed Name: HAROLD T. FUJII

Title: VICE PRESIDENT, INTELLECTUAL PROPERTY

CERTIFICATION UNDER 37 CFR 1.8

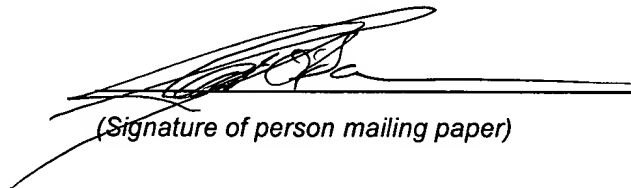
I hereby certify that the foregoing:

Articles on Sony EMarker Device (14 pages)

is being deposited with the United States Postal Service on January 6, 2006 with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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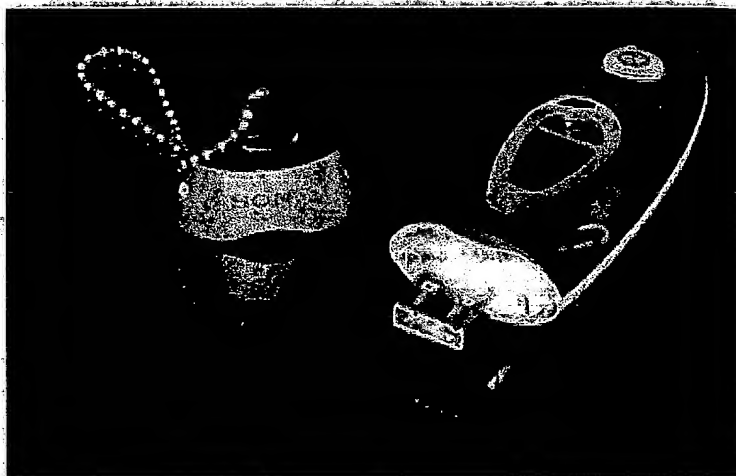

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Web Illusions assembled a team of developers that provided technical expertise to Sony Music for the creation of the E-Marker website and applications. The E-Marker was a key fob device that allowed users to simply push a button when they heard a song they like on the radio but didn't know who the artist was. They could then take the device, plug it into a USB port on their computer and would be taken to the E-Marker website where they would see the artist name, song title, album title and link to CDNow.



We were under a tight schedule and had to have the site online within 60 days. We managed the project and were responsible for bringing the Sony designed website to life. We built the site using HTML, Javascript, Java and Perl. The site included user registration, radio preset preferences and login facilities. We developed a windows based application that would sense the E-Marker device being inserted into a USB port, take time stamps from the E-Marker via a Sony supplied driver and transport that data to the E-Marker website. Once this data was uploaded to the website via a web browser, it would be inserted into the Oracle database and compared against the users preset radio stations. A link to CDNow would allow the user to listen to a sample of the song and also buy that CD online.

The system was used by approx. 2000 internal Sony users and then brought online for a few months before the project was cancelled.

The website is no longer available. <http://www.emarker.com>

Sony EMK-01 E-Marker

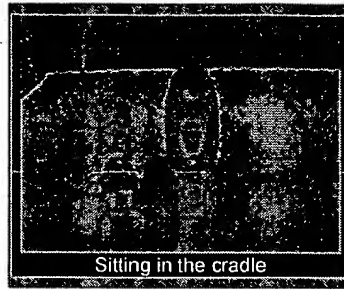
(SKU: EMK01)



By combining the innovation of Sony technology with the power of the Web, eMarker.com solves the most frustrating part of hearing a song on the radio - not knowing the title of the song or the name of the artist who's just captured your attention. By pressing the button on the eMarker device, you can "eMark" the song you hear on the radio. Then through eMarker.com, you can locate song titles, and artist and CD information by simply plugging the eMarker into a PC. The eMarker.com site also offers 30-second audio clips, a place to store your lists of favorite song titles, and it even connects you to various music retailer Web sites, including Amazon and CDNOW. The eMarker and eMarker.com enable music lovers to connect to the music they hear on their local radio stations, with information and resources on the Internet. The eMarker.com service includes radio playlists for more than 1,100 radio stations nationally, covering over 80 percent of the U.S. listener base for current music. You can simply check for your favorite local stations by using an easy zip code search on eMarker.com. Then it's time to eMark your world.

SONY e-Marker

(extracted from <http://www.firingsquad.com/hardware/emarker/> on 08/09/05)



Name that tune

It's happened to all of us at some point in time. You cruisin' down the street in your '64. Jackin' the freaks and clocking the dough. A tight jam starts playing on the radio, so you bump it up and start praying for the DJ to actually tell you the name of the song instead of airing a wack phone conversation between him and some listener.

Of course, you know that the DJ isn't going to tell you the name of the song, so you quickly memorize a couple choice lyrics that could be possible song titles. If you're lucky, the radio station you listen to has an online playlist where you can try to look up the song. If that isn't an option, you face the daunting task of performing an online search with a handful of lyrics.

You could argue that the search is part of the fun, and it makes finding the song even more rewarding. Then again, you're probably someone who actually stops to smell the roses, and starts sentences with "it's not about winning or losing."

Oh please. We have things to do, terrorists to AWP, websites to launch, third-world countries to crush. For people like us, there's the Sony eMarker.

eMarker

The Sony eMarker is an ingenious \$20 key-chain shaped gadget that helps you identify the title and artist of songs you hear on the radio.

You simply press a button on the eMarker to create an "eMark" whenever you hear a song you like on the radio. Each eMarker can record up to ten of these eMarks. Once you get home (or wherever your computer resides), you can hook up the eMarker to your PC through the USB interface and upload the eMarks to your personal "my emarks" page on the eMarker.com website. There you can find the name and artist for each of your eMarks. There are future plans to enable users to eMark songs outside their normal listening areas, and to eMark songs on TV.

Sounds simple enough, but how does it perform in real life? We tested out the eMarker for about a week. Read on to find out more about the eMarker, how it works, and how it performed in our testing.

First impressions

Specifications

eMarker (EMK-T01)

Power Requirement: CR2025 lithium battery

Battery life: Approx. 6 months

Output: USB connector

Dimensions: 32.4 x 94.2 x 16.1 mm

Mass: Approx. 0.9 oz.

eMarker cradle (EMK-C01)

Input/Output: USB connectors

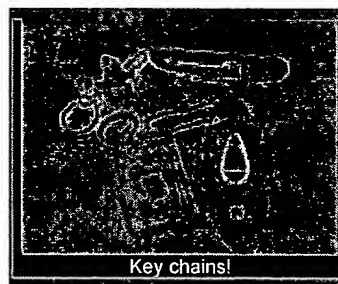
Dimensions: 79.6 x 28.6 x 64.6 mm

Mass: Approx. 0.9 oz.

Notes

The eMarker package contains the eMarker, the USB cradle, a CR2025 lithium battery, and a set of instructions. Sony claims a battery life of six months assuming you eMark ten times a day including one data transfer. Our instruction manual was a 16.5 x 11.5 sheet of paper folded over three times with one side in English, the other in Spanish.

The Sony eMarker is about the size of a large key-chain and weighs just under one ounce. Our eMarker unit is a translucent green with orange highlights. As far as we know, green is the only color, but the fact that the unit color is listed on the box leads indicates that there may be more colors available in the future.

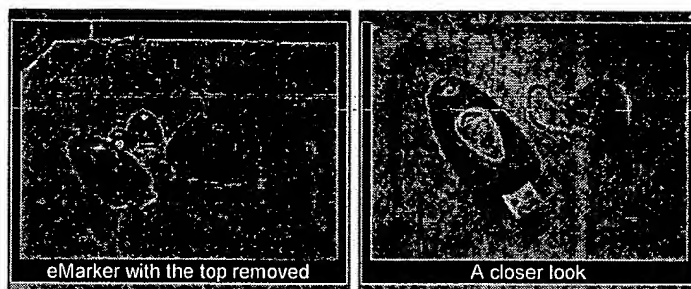


There is a small LCD screen in the middle of the front face, and the battery compartment sits in the back. The main part of the LCD displays up to ten dots that represent the number of eMarks you have stored. A second part of the LCD display is for the "ROAM" and "TV" features (unsupported as of yet).

Easy to use

You create eMarks by pushing a slightly recessed button just below the LCD screen. You can only store up to ten eMarks. If you try to make an eMark when there isn't any space left, the dots on the

LCD screen will simply blink and the eMark won't be recorded. You can delete eMarks by pushing a small cancel button in the back. The cancel button is very small and deeply recessed, the kind you can only press with the tip of a pen or some kind of sharp object. The delete button only kills the most recent eMark. If you have five eMarks and you want to delete the first one, you'll have to keep on deleting down the line.



The unit has a removable top that covers the USB connector. You can simply plug the eMarker into the USB slot in the back of your PC, but it might be a tight fit and a bit inconvenient to reach back there each time you want to upload your eMarks. To make uploading a little easier, Sony includes a USB cradle for your eMarker. A three foot cord gives you enough freedom to place the cradle base in an easier to reach area. As far as we can tell, the cradle is simply a USB connector extension. We plugged a USB smart media card reader into the eMarker cradle and it worked flawlessly.

How does it work?

It's about time

The eMarker unit itself seems to be nothing more than a glorified time-stamp device. The eMarker records a time-stamp each time you press the button to make an eMark. The eMarker unit itself is only half of the service. The other half resides on Sony's eMarker website.

When you insert the eMarker unit into its cradle (or an open USB port), it opens the eMarker website in your primary browser window or launches a new browser window if you don't have one open at the time. The site then opens your own personal "my emarks" page, and loads all of the new time-stamps from your eMarker unit.

Looking up the times

Okay, so now you have a bunch of time-stamps. What good is that? Well, this is where the good people at Broadcast Data Systems (BDS) come in to help. BDS identifies and keeps track of all the songs played by over 1,100 radio stations across the United States and Canada, so it's no surprise that Sony has tapped BDS to power its eMarker song identification service.

Once you upload your eMarks, you can use the eMarker website to use the time-stamps to look up the songs that were playing on the radio at that time. Pretty simple, eh?

Restrictions

Play lists are updated every 10 minutes in major metropolitan areas, but other, smaller areas may have to wait 24 hours for each update. You can check eMarker station coverage [here](#).

Currently, the eMarker service only covers alternative, adult contemporary, country, rock, pop, urban and R&B stations. Jazz and classical lovers are left out in the cold for now, but Sony hopes to add coverage soon.

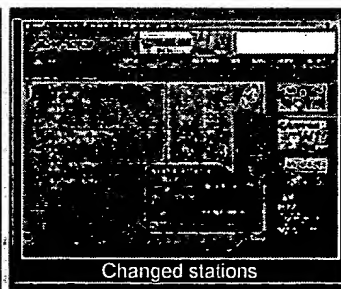
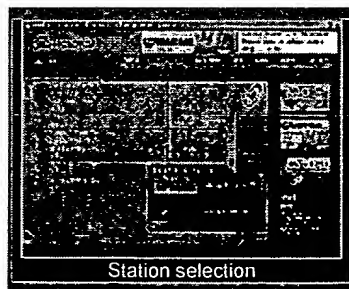
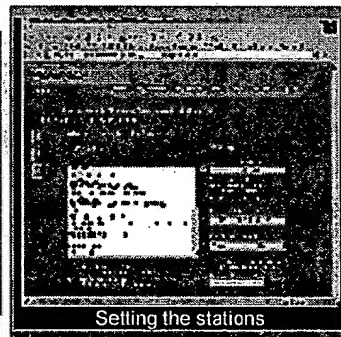
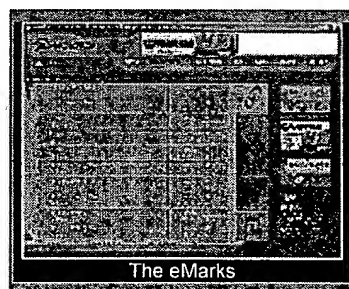
Performance

Real world testing

Installation and setup was fairly painless. As we mentioned earlier, the package itself only contains the eMarker unit, USB cradle, battery, and instructions. You have to download and install the USB driver software from the eMarker website. It's a fast download, only 1.54 MB, and we didn't encounter any problems during the installation process.

Next, we registered on the eMarker website, since you need to have an account in order to use the service. Don't worry, the account is free. All the costs are built into the price of the eMarker unit.

After we set everything up, we listened to the radio and made eMarks until we hit the ten eMark limit. We then slid the eMarker unit into the USB cradle. The eMarker site automatically launched and all of the eMarks appeared on our personalized "my emarks" page. Each eMark lists the title of the song, the artist, the time-stamp, radio station, and a buy link. If available, there will also be links to more information and sound clips.

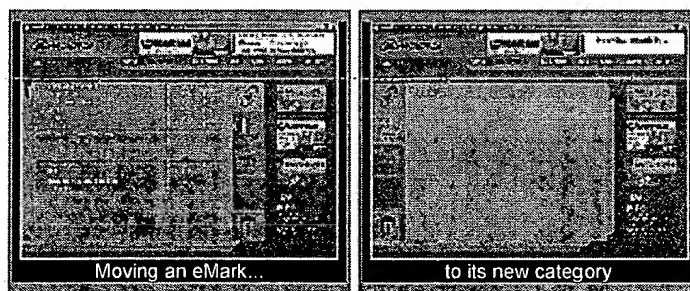


During the registration process, you're asked to select you three favorite radio stations. The eMarks initially default to your favorite radio station, but you can change the station selection by clicking on the station number on the eMark. As you switch stations, the listed song information will change accordingly. The station selection option will only list your favorite three stations, but you can select others with a little extra clicks.

Does it work?

All the eMarks we made were identified accurately for the most part, but the service wasn't able to identify songs in a mix. The log times for songs aren't always exact, but they are still fairly accurate. Once in a while we encountered an incorrect song listing, but we could quickly find the right song with a few clicks by shifting the time-stamp forward or back.

We'd say that the eMarker had a >95% success rate in our tests. The only true failed eMarks occurred when we tried to identify songs out of a mix. We were able to identify most songs by simply adjusting the radio station or fudging with the time-stamp. Of course, we have to note that we're located in a fairly large media market (SF Bay Area), so you may encounter different results in your area.



When you're done setting your eMarks, you can save them and move them around on your personal page. While your eMarker unit can only hold ten eMarks, your personal eMarker page can hold up to 500. You can even create different bins or folders for storage and categorization. The entire page is Flash based, so expect to encounter a little lag with every click and drag.

emarker : registration 2 - Microsoft Internet Explorer provided by Gamers.com

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Links Yahoo! Shock VE ESPN Internal Admin Usernews Useradmin SV Web Serve

Address http://www.emarker.com/reg/registration.html?_DARGS=%2Freg%2Freg1.html

emarker

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Register step 2: Pick your favorite radio stations

Fields with an asterix (*) are required.

Select Your Favorite Radio Station

(City) Stations

1
2
3

KZSA 92.1

** KSJO 92.3 92 KSJO

KGBY 92.5 92.5

** KYCY 93.3 Y93-3 COUNTRY

** KRTY 95.3 COUNTRY 95.3 KRTY

KYMX 96.1 96.1

** KOIT 96.5 96.5 KOIT LITE ROCK LESS TALK

KSEG 96.9

** KLLC 97.3 ALICE @ 97.3

** KUFY 98.5 98.5 KFOX CLASSIC ROCK EXPERIENCE

KPXQ 98.5

** KSOL 98.9 KSOL 98.9 FM

KRCX 99.9

** KBRG 100.3

KZZO 100.5

* My Favorite Station

KYLD 94.9 WILD 94.9

This station will be your default station. The songs played on this station will always show up first.

2nd Favorite station

KMEL 106.1 KMELJAMS

3rd Favorite station

KZQZ 95.7 Z95.7 TODAY'S

If you don't see your favorite station, tell us; we're adding new stations all the time.

** indicates stations updated every ten minutes. Other stations are updated once a day.

Tip : Click arrow to select station

eMarker.com - Microsoft Internet Explorer provided by Gamers.com



four

James

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faq

help

about

NEW EMARKS

He Loves U Not Dream	fr 12/08 3:33:07 pm	94.9 buy	10
He Loves U Not Dream	fr 12/08 3:34:39 pm	94.9 buy	
Angel Shaggy	fr 12/08 3:33:47 pm	94.9 buy	
Angel Shaggy	fr 12/08 3:30:43 pm	94.9 buy	
Angel Shaggy	fr 12/08 3:30:30 pm	94.9 buy	
I'll Be Loving You Collage	fr 12/08 3:18:10 pm	94.9 buy	
I'll Be Loving You Collage	fr 12/08 3:12:47 pm	94.9 buy	
I'll Be Loving You Collage	fr 12/08 3:11:21 pm	94.9 buy	
I'll Be Loving You Collage	fr 12/08 3:08:38 pm	94.9 buy	
I'll Be Loving You Collage	fr 12/08 3:08:19 pm	94.9 buy	

Son

Coming soon to a location near you

Son

805

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NEW EMARKS

Let's Get Married Jagged Edge	11/12/02	106.1	buy
He Loves U Not Green	11/12/02	24.9	buy
Angel Shaggy	11/12/02	24.9	buy
Danger (Been So Long) Mystikal feat. Nivea	11/12/02	106.1	buy
Hi Be Loving You Collage	11/12/02	24.9	buy
Hi Be Loving You Collage	11/12/02	24.9	buy
Hi Be Loving You Collage	11/12/02	24.9	buy

radio station controls

favorite stations

94.9

106.1

95.9

station browse ▾

change location ▾

TRASH

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emarker **4/10/03** **four**

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NEW MARKS

Let's Get Married Warrant & Jay	in 12/03 2:44:00 pm	100.1 100.1	100.1 100.1
He Loves U Not L Team	in 12/03 3:29:37 pm	94.9 94.9	94.9 94.9
Angel Shaggy	in 12/03 3:37:17 pm	94.9 94.9	94.9 94.9
Danger (Been So Long) Mystikal Feat. Nivea	in 12/03 3:38:10 pm	100.1 100.1	100.1 100.1
Cruisin' D'Angelo	in 12/03 3:42:47 pm	100.1 100.1	100.1 100.1
I'll Be Loving You Gallant			
I'll Be Loving You Gallant			

radio station controls

favorite stations

94.9
100.1
98.7

station browser ▼

change location ▼

TRASH





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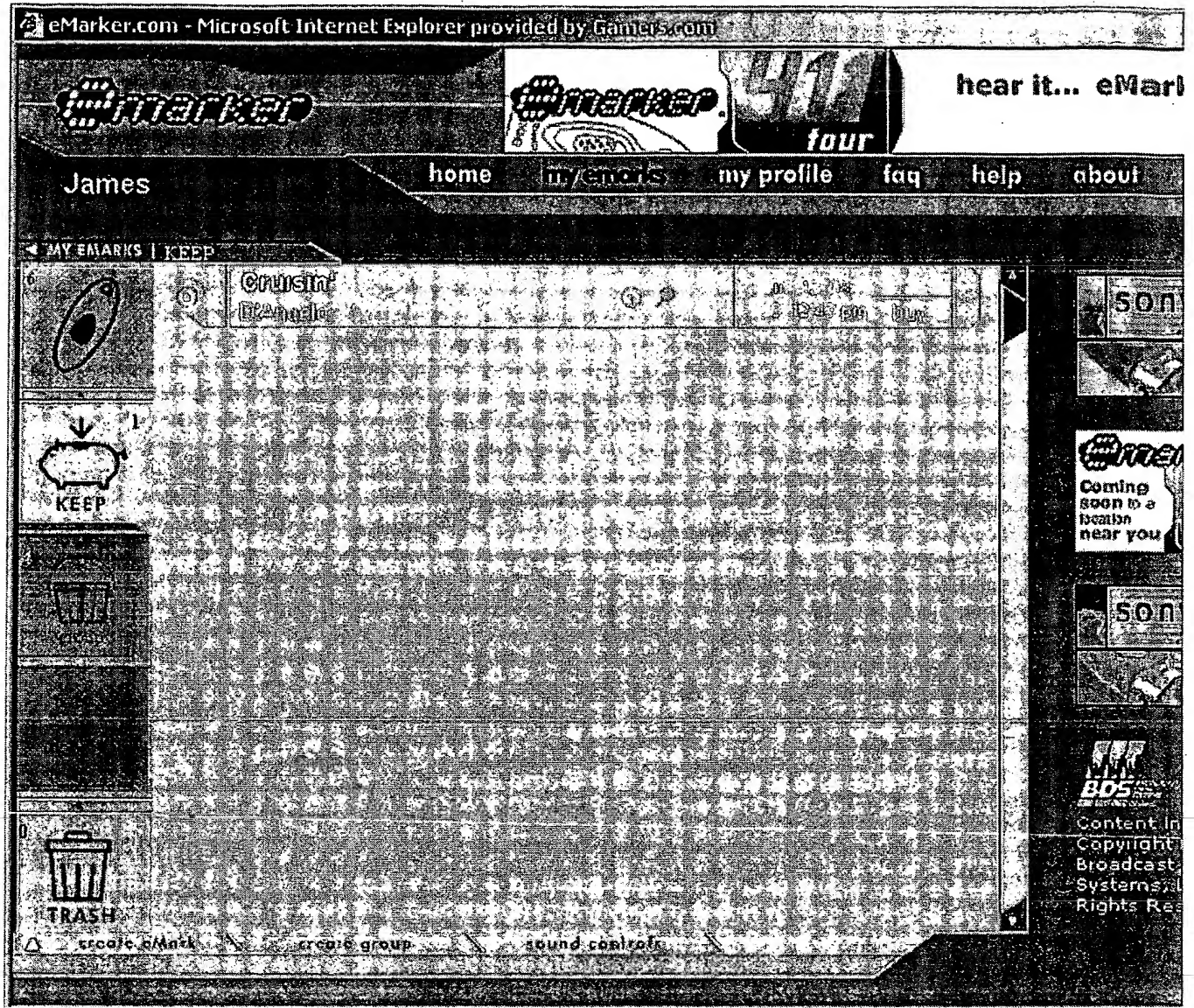
James home my emails my profile faq help about

NEW EMAILS

Let's Get Married Lined Eds	in 12:03 100 3:40:00 pm July	   
He Loves U Not Dream	in 12:03 249 3:34:39 pm July	
Angel Shaggy	in 12:03 349 3:33:17 pm July	
Danger (Been So Long) Mythical Fx1 Nivea	in 12:03 100 3:33:10 pm July	
Most Girls Pink	in 12:03 957 3:41:24 pm July	
Thug In Me Thug In You Keri & Jero	in 12:03 100 3:41:18 pm July	

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